



- (1) Did claimant suffer accidental injury arising out of and in the course of her employment with respondent on the date alleged?
- (2) Did claimant give timely notice of accident?
- (3) What is the nature and extent of claimant's injury and/or disability?
- (4) Did the Administrative Law Judge err in ordering claimant to pay certain deposition costs associated with the litigation of this claim?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant contends she suffered accidental injury on February 19, 1997, when, while descending a ladder, she allegedly missed the last step, landing hard on her left leg, twisting the entire leg and her hip and falling into a fabric bin. Claimant testified that her back, hip and leg hurt the rest of the evening and that she was limping. Claimant also testified she advised her department manager, Evelyn Kloppenberg, of the injury within seven days. Ms. Kloppenberg, however, denies being told of claimant's injury until July 1997.

After first testifying that she advised Ms. Kloppenberg of her injury within seven days, claimant later testified that the first person she advised of her injury was Nancy Padgett. Claimant went on to state that she told Ms. Padgett of her injury in July. She also testified that, when she first told respondent of her injury, they sent her to a doctor "that day." Claimant's first appointment with a doctor authorized by respondent was July 25, 1997. That is also the date claimant filled out an accident report for the February 19, 1997, accident.

Claimant later received treatment from John M. Wertin, D.C., and Thomas E. Botz, D.C. However, the medical records of Dr. Wertin and Dr. Botz contain no mention of claimant's alleged work-related injury of February 19, 1997.

On July 25, 1997, claimant was sent to Dr. Kurt Martin and referred to Glenn Amundson, M.D., an orthopedic specialist. Claimant was taken off work on that date and has not returned to work since then.

Claimant was asked at the preliminary hearing if she had had prior back problems. At first, claimant testified that she had never had problems like this before. However, medical records presented to claimant indicated she had a long history of back problems. Claimant acknowledged, after being provided the medical records of Nanda N. Kumar, M.D., and Community Memorial Hospital, that she had a long history of back problems. Medical reports from 1991 indicated that claimant had suffered back pain almost continuously for eleven years, with only brief periods of relief. This medical evidence is directly contrary to claimant's testimony at preliminary hearing.

Written claim was submitted to respondent on July 25, 1997, in the form of a letter from claimant requesting medical benefits for her February 19, 1997, injuries. This letter was served within 200 days of claimant's alleged date of accident. The Appeals Board, therefore, affirms the Administrative Law Judge's finding that claimant submitted timely written claim.

The finding by the Administrative Law Judge that claimant submitted timely written claim constitutes the only positive finding by the Administrative Law Judge in reference to claimant's allegations. The Award of the Administrative Law Judge found claimant's claim to be "appalling" and "unmeritorious" and "essentially frivolous." The Administrative Law Judge went on to assess the court reporter's fees for all transcripts other than the preliminary hearing and discovery deposition against claimant.

Every witness named by claimant who testified, provided information contrary to claimant's contentions. Respondent's representatives contradicted claimant's allegations of timely notice. The medical records submitted contradicted claimant's allegation that she suffered accidental injury arising out of and in the course of her employment. The medical records also cast serious doubt on claimant's credibility, showing that she misrepresented her medical history at preliminary hearing when she testified that she had never had problems like this before. Medical records placed into evidence show a long history of back problems.

The Appeals Board finds the record does not support claimant's contentions that she suffered accidental injury arising out of and in the course of her employment with respondent or that she gave timely notice pursuant to K.S.A. 44-520.

The Appeals Board, therefore, finds that claimant failed to prove accident arising out of and in the course of her employment and failed to provide timely notice of accident pursuant to K.S.A. 44-520.

K.S.A. 44-555 allows the Director or the administrative law judge to assess all or part of the certified shorthand reporter's fees to any party to the proceedings for compensation. Here, the Administrative Law Judge assessed the court reporter's fees for all hearings other than the preliminary hearing and discovery deposition against claimant.

The Appeals Board finds that claimant was less than honest in describing her prior physical problems. In addition, claimant's contentions of accidental injury and notice were contradicted at almost every turn. The Appeals Board, therefore, affirms the decision of the Administrative Law Judge to assess all court reporter's fees other than the preliminary hearing and the discovery deposition against claimant.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bryce D. Benedict dated November 12, 1999, denying claimant, Karen Nordquist, an award against the respondent, Wal-Mart, and its insurance carrier, Insurance Company State of Pennsylvania, and assessing certain costs to claimant, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Roger D. Fincher, Topeka, KS  
Donald J. Fritschie, Overland Park, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director